

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEREMY L. BENSON,	§
	§ No. 177, 2011
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0603015815
Plaintiff Below-	§
Appellee.	§

Submitted: April 13, 2011

Decided: June 14, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 14th day of June 2011, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Jeremy Benson, filed this appeal from the Superior Court's denial of his motion for correction of sentence under Superior Court Criminal Rule 35(a). The State has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Benson's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Benson pled guilty and was sentenced in 2006 on two counts of Rape in the Fourth Degree. This Court affirmed his convictions and sentence on direct appeal.¹ Since then, Benson has filed several unsuccessful motions for modification of sentence or postconviction relief. Benson filed his latest motion for correction of sentence under Superior Court Criminal Rule 35(a) alleging that his sentence for two counts of Rape in the Fourth Degree is illegal because he only had sex with the victim one time. The Superior Court treated his motion as a motion for modification of sentence under Rule 35(b) and denied it as repetitive.

(3) After careful consideration of the parties' respective positions on appeal, we find it manifest that the judgment of the Superior Court must be affirmed. It is well-settled that the limited purpose of a motion under Rule 35(a) is to permit correction of an illegal sentence.² It is not a means for a defendant to attack the legality of his convictions or to raise allegations of error occurring in the proceedings leading to the judgment of conviction.³ Benson pled guilty to two counts of Rape in the fourth Degree. To the extent he is contending he did not commit two counts of Rape in the Fourth Degree, that is a contention he should have raised prior to the entry of his

¹ *Benson v. State*, 2007 WL 2523180 (Del. Sept. 6, 2007).

² *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

³ *Id.*

guilty plea. Accordingly, we find that the Superior Court did not err in treating Benson's motion as a motion for modification of sentence and denying it as repetitive.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice